

Changes in Section 44AB and due date of ITR & Reports

One of the most talked about amendments in tax proposals are doing away with the tax audit requirement for businesses having turnover of upto ₹ 5 crores, changes in the due date of ITR and other reports required to be submitted under the Income-tax Act, 1961. Such proposals will have far reaching impact and may require increased focus on standardisation of various processes related to annual tax return filing to ensure timely compliance. Read on...

Background

Tax reforms have been high on the agenda of the Central Government in the last couple of years. Increasing the tax base, reduction in tax rates for companies without any exemption/ deduction, incentivise

the start-ups, single window clearance, etc. have been some of the crucial steps taken by the Government to reduce the tax litigation and create an environment of tax compliant society in India.

In this backdrop, the Finance Minister of India, in the Budget Speech 2020 emphasised on reducing the tax compliance burden in India and boosting India as an attractive destination for foreign investments.

This article analyses the changes proposed in Section 44AB of the Income-tax Act, 1961 ('the Act'), its impact on various other sections including the due dates of filing the Income-tax returns by the taxpayers.

Section 44AB of the Act, as it stands presently, reads as under:



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“Audit of accounts of certain persons carrying on business or profession

44AB. Every person,—

- (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year; or*
- (b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or*
- (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the*

profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

- (d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or
- (e) carrying on the business shall, if the provisions of sub-section (4) of Section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Provided that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of Section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year.

Provided further that this section shall not apply to the person, who derives income of the nature referred to in Section 44B or Section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later.

Provided also that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

Explanation.—For the purposes of this section,—

- (i) “accountant” shall have the same meaning as in the Explanation below sub-section (2) of Section 288;
- (ii) “specified date”, in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of Section 139.”

Further, the Explanation below sub-section (2) of Section 288 defines “accountant” to mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of Section 6 of that Act subject to certain exclusions as contained therein.

The above section stipulates that the following persons are required to get their accounts compulsorily audited by a chartered accountant:

- A person carrying on business if the total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds ₹ 1 crore in any previous year.
- A person carrying on profession, if his gross receipts in profession exceeds ₹ 50 lakhs in any previous year.

- A person covered under section 4AE (Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages) or 44BB (Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils) or 44BBB (Special provision for computing profits and gains of foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects) of the Act if such person claims that the profits and gains from the business are lower than the profits and gains computed under these sections.

- A person covered under section 44ADA (Special provision for computing profits and gains of profession on presumptive basis) if such person claims that the profits and gains from the profession are lower than the profits and gains computed in accordance with the provisions of Section 44ADA and if his income exceeds the maximum amount which is not chargeable to tax in any previous year.

- A person covered under section 44AD(4) if his total income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

Further, Rule 6G of the Income-tax Rules, 1961 (the Rules) prescribes that the audit report under section 44AB shall be furnished in the following forms:

- In the case of a person who carries on business or profession and who is required by or under any law

to get this accounts audited- The audit report should be submitted in Form 3CA.

- In the case of a person who carries on business or profession and who is not required to get his accounts audited under any other law- the audit report should be submitted in Form 3CB.

In both the cases provided above, the prescribed particulars are required to be furnished in Form 3CD.

The provisions of Section 44AB of the Act were introduced for the first time in the Finance Bill, 1984. While introducing such provisions, the then Finance Minister of India, Mr. Pranab Mukherjee in his speech said,

“In all cases where the annual turnover exceeds ₹ 20 lakhs or where the gross receipts from a profession exceed ₹ 10 lakhs, I am providing for a compulsory audit of accounts. This is intended to ensure that the books of accounts and other records are properly maintained and faithfully reflect the true income of the taxpayer.”

Further as per the Memorandum to the Finance Bill, 1984, it was stated that:

“Compulsory audit of accounts of certain persons carrying on business or profession

15. Accounts maintained by companies are required to be audited under the Companies Act, 1956. Accounts maintained by co-operative societies are also required to be audited under the Co-operative Societies Act, 1912. There is, however, no obligation on other categories of taxpayers to get their accounts audited.

16. A ‘proper audit for tax purposes would ensure that the books of account and other records are properly maintained and that they faithfully reflect the income of the taxpayer and

claims for deductions are correctly made by him. Such audit would also help in checking fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of assessing officers in carrying out routine verifications, like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. The time of the assessing officers thus saved could be utilised for attending to more important investigational aspects of a case.”

Tax audit report has been one of the most important aspects of the tax system and it provides a basic framework for preparation of the Income-tax return for the assessee under the provisions of the Act. At the same time, it places a tremendous responsibility on the members of our profession in carrying out the audit and in furnishing the audit report setting forth the prescribed particulars.

When the requirement for preparation of tax audit report was introduced in year 1984, most of the accounting systems were manual and hence, the third party audit was introduced to ensure the authenticity of the books of accounts and records thereto.

To cope with the evolving situations and provide robust information framework, Tax audit report has also undergone various changes over the years.

With the development of accounting systems (like introduction of new systems like ERP, Tally, etc.), access to global markets through liberalised policies and increased focus on accounting of the business/profession, there was an expectation from the Industry to relax the provisions of Section 44AB of the Act. The presence of presumptive taxation provisions

and self-declaration mechanisms in place also added more fuel to this expectation. Presently, the books of accounts/various ledgers are mostly kept in computerised form and the third party information is also available in digitalised/e-formats.

Various other factors which may have contributed to this expectation can be summarised as under:

- With increased focus on accountability and correct reporting, the Act provides enough penal consequences for the assessee who do not comply with the provisions of the Act or submit the false or wrong information.
- There is enough duplication regarding the various information which are required to be furnished in tax audit report as well as in Income-tax return forms (ITR). Hence, tax audit report may be an additional compliance burden on the small assessee.
- There are stringent governance norms under various other laws in force (e.g. the Companies Act, 2013, SEBI regulations, etc.) for the assessee to prepare their books of accounts which represent true and fair view.

To overcome this compliance burden, the Finance Bill, 2020 has proposed following changes in Section 44AB of the Act and other connected provisions:

- The threshold limit for furnishing tax audit report under section 44AB of the Act for person carrying on business has been increased to ₹ 5 crores from ₹ 1 crores where:
 - a) The aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt; and

- b) The aggregate of all payments in cash during the previous year does not exceed 5% of such payment

Thus, if cash payment or cash receipts for a year are up to ₹ 25 lakhs with total turnover or sales or gross receipt from the business upto ₹ 5 crores, there shall be no requirement to get the accounts audited under Section 44AB and accordingly, there shall be no requirement to furnish the Tax Audit report.

Changes in the due date for furnishing various reports (including tax audit report):

Presently, the due date for filing the tax audit report under section 44AB of the Act and various other reports (e.g. Form 3CEB – Transfer pricing certificate, Form 29B- MAT Certificate, certificates required under sections 10A, 12A, 50B, 80-IA, 80-IB etc) for claiming exemption/ deductions under the Act is aligned with the date specified under section 139(1) of the Act for filing the ITR.

In order to enable pre-filled tax return forms to ensure ease of compliance, it has been proposed that in case of persons having income under the head of profits and gains from business and profession, the above mentioned reports shall be furnished by the taxpayers one month prior to the due date of filing the tax return. The proposed amendments will be effective from 1st April 2020 and will accordingly apply from AY 2020–21 onwards. Consequential amendments have been made in various other Sections i.e. Section 10, Section 10A, Section 12A, Section 32AB, Section 33AB, Section 33ABA, Section 35D, Section 35E, Section 44AB, Section 44AD, Section 50B, Section 80-IA, Section 80-IB,

Section 80JJAA, Section 92F, Section 115JB, Section 115JC and Section 115VW of the Act.

Changes in the TDS/ TCS provisions having reference to Section 44AB of the Act:

The amendment relating to increase the threshold to ₹ 5 crores under Section 44AB of the Act for getting the books of accounts audited will also have consequential effect on various TDS/TCS provisions contained in Sections 194A, 194C, 194H, 194I, 194J and 206C as these provisions trigger liability of TDS/TCS on certain categories of persons, if the gross receipt or turnover from the business or profession carried on by them exceed the monetary limit specified in clause (a) or clause (b) of Section 44AB.

Therefore, it has been proposed to amend these sections to include the reference to the monetary limits specified in clause (a) or clause (b) of Section 44AB of the Act to ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession, as the case may be.

Change in the due date for filing the Income-tax return (ITR) – Amendment in Section 139 of the Act

Presently, the due date for furnishing the tax return:

- (i) in case of a company; or
- (ii) a person other than the company whose accounts are required to be audited under the Act or under any law for the time being in force; or
- (iii) a working partner of a firm whose accounts are required to be audited under the Act or under any law for the time being in force;

is 30th September of the relevant AY. Further, in case a taxpayer is required to furnish the Transfer pricing report as required under Section 92E, the due date of filing the tax return is 30th November of the relevant AY.

It is proposed to extend the due date for furnishing the tax return from 30th September to 31st October of the relevant AY. It may be noted that there are no changes in due date of filing the ITR if the taxpayer is required to furnish Form 3CEB under Section 92E of the Act.

It is also proposed to remove the distinction between a working and non-working partner of a firm with respect to the due date of filing their personal ITR. The ITR in such case is now proposed to be filed by 31st October of the AY in these cases.

The proposed amendments are effective from 1st April 2020 and will accordingly apply from AY 2020–21 onwards.

Conclusion

While the above amendments are the steps taken in the right direction, it would have far reaching consequences. The requirement to do away from tax audit report for businesses having the total sales, turnover or gross receipts exceeding ₹ 5 crores will entail putting significant efforts on preparation of ITR going forward. This would be the case as the relevant information having bearing on the tax computation (e.g. Section 43B disallowances, provisions related to gratuity, tax depreciation schedule, provision for leave encashment, etc.) will still have to be compiled by the Companies which were earlier covered in the Tax audit reports.

Further, early filing of tax audit reports and other reports/ certificates as required under various provisions of the Act will ensure that the exercise for annual tax compliance season is started early to avoid last minute rush. The businesses/ taxpayers may also like to standardise the various processes related to annual tax return filing to ensure timely compliance. ■